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### Minority rights in post-war Iraq: an impending catastrophe?

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## **Minority rights in post-war Iraq: An impending catastrophe?**

**Bill Bowring** *University of London*

### **Abstract**

Many commentators see Iraq as divided between Sunni, Shia and Kurds – and perhaps a few Turkmen. Nothing could be further from the truth. Iraq also has significant populations of Baha'is, Christians, Farsi Kurds, Mandaean, Palestinians, Shabak and Yezidis. Some of Iraq's minority groups have been present in the region for more than two millennia. But they now face the threat of eradication or expulsion from their ancient homeland. Since 2006, the situation has deteriorated. To make matters worse, the international law of minority and group rights has largely developed in the context of the recent history of Europe, and, perhaps, has little to contribute to the situation in Iraq. This article asks what role, if any, can international law, notably the law of human rights, minority rights and group rights, play in resolving or mitigating conflict. This is especially the case when the underlying rationale of this law is so problematic. The structure of this article is as follows. I start with an overview of the various minority groups in Iraq. There is a common theme – things have got a lot worse since 2003. Next, I explore Iraq's statehood, that it is a recent construct, a product of British imperial ambition and cynicism. In fact, Mesopotamia, the territory of contemporary Iraq, was a Persian territory for many centuries until its conquest by militant Islam, its glorious role in the Golden Age of Islam (contemporaneous with Western Europe's dark ages) and incorporation into the Ottoman Empire. Third, I reflect on Britain's disastrous adventures in the region. Mesopotamia was the scene of Britain's greatest military disaster; but Britain has been responsible for the unceasing violence and persecution which characterizes modern Iraq. Fourth, I turn to a marvellous dream, a document of extraordinary cogency and unreality: Iraq's 1932 Declaration, on admission to the League of Nations. This document is a tragic mirage: an Iraq of respect for and enjoyment of its cosmopolitan diversity. It is significant that the only two occasions on which such a vision achieved a purchase in Mesopotamia were the short periods of Kemalist and Communist rule. For Britain and the United States such a trajectory was utterly impermissible. Fifth, I turn to the fact that Iraq was one of the first members of the United Nations, and ratified all the relevant human rights

instruments dealing with minority rights. Iraq was until the 1990s an assiduous participant in the UN human rights mechanisms, submitting periodical reports to the treaty bodies and submitting itself to interrogation in Geneva, followed by concluding observations and recommendations. This continued despite the eight years' war with Iran, the disastrous invasion of Kuwait in 1991 and the long years of sanctions, blockade and continuous aerial attack, reminiscent of Britain's reliance on the RAF during and after the Mandate. Finally, there is Iraq's 2005 Constitution, a joke version of the 1932 Declaration. At the same time, since 1999 Iraq has not engaged with the UN human rights mechanisms. My conclusion is not sanguine.

## **Keywords**

minority rights, international law, conflict, Iraq, League of Nations

## **Introduction**

Many commentators see Iraq as divided between Sunni, Shia and Kurds – and perhaps a few Turkmen. Nothing could be further from the truth. Iraq also has significant populations of Baha'is, Christians, Fali Kurds, Mandaeans, Palestinians, Shabak and Yezidis. As Preti Taneja of Minority Rights Group points out, some of Iraq's minority groups have been present in the region for more than two millennia. However, they now face the threat of eradication from their ancient homeland (Taneja 2007). Sunni–Shia violence has diminished, but as Minority Rights Group's latest 'Peoples Under Threat' report shows, the tension between Kurds and Arabs over disputed territories in the north now means that Nineveh and Kirkuk, where many of the smaller minority communities live, have become Iraq's most dangerous governorates. Chaldo-Assyrians, Shabak, Turkmen and Yezidis have all suffered violent attack in the last year and remain gravely at 'risk of mass displacement' (Minority Rights Group 2010). Bomb attacks in May 2010 led commentators

to highlight the ‘unrelenting plight of Iraq’s Christians’ (Goodenough 2010). In 2006, Makau Mutua, he himself a profound critic of the discourse of human rights, argued that ‘[...] only a popularly legitimate accommodation of minority and group rights in a democratic constitutional framework, a virtually impossible challenge, can avert the disintegration of Iraq’ (Mutua 2006: 928). Without such a process Iraq is threatened with collapse or bloodshed and flight on a horrifying scale. Since 2006, the situation has only deteriorated. To make matters worse, the international law of minority and group rights has largely developed in the context of the recent history of Europe, and, perhaps, has little to contribute to the situation in Iraq.

This article asks what role, if any, can international law, notably the law of human rights, minority rights and group rights, play in resolving or mitigating conflict, especially when the underlying rationale of this law is so problematic. Minority Rights Group International has provided three excellent, thoroughly researched reports on Iraq, including Preti Taneja’s (2007) ‘Assimilation, Exodus, Eradication: Iraq’s Minority Communities Since 2003’, Chris Chapman and Preti Taneja’s (2009) ‘Uncertain Refuge, Dangerous Return: Iraq’s Uprooted Minorities’ and Mumtaz Lalani’s (2010) ‘Still Targeted: Continued Persecution of Iraq’s Minorities’. Human Rights Watch (2009, 2010, 2011) has also published three detailed reports. The reader is referred to these reports for a wealth of accurate information and many poignant case studies.

The structure of this article is as follows. I start with an overview, drawing from Lalani’s work for Minority Rights Group, of the various minority

groups in Iraq. There is a common theme – things have become much worse since 2003. Next, I explore Iraq's statehood, that it is a recent construct, a product of British imperial ambition and cynicism. In fact, Mesopotamia, the territory of contemporary Iraq, was a Persian territory for many centuries until its conquest by militant Islam, its glorious role in the Golden Age of Islam (contemporaneous with Western Europe's dark ages) and incorporation into the Ottoman Empire. What is most characteristic of Iraq's history, however, is its rich cosmopolitanism, especially its Jewish heritage.

Third, I reflect on Britain's disastrous adventures in the region. Mesopotamia was the scene of Britain's greatest military disaster; but Britain has been responsible for the unceasing violence and persecution which characterizes modern Iraq. Fourth, I turn to a marvellous dream, a document of extraordinary cogency and unreality: Iraq's 1932 Declaration, on admission to the League of Nations. This document is a tragic mirage: an Iraq of respect for and enjoyment of its cosmopolitan diversity. It is significant that the only two occasions on which such a vision achieved a purchase in Mesopotamia were the short periods of Kemalist and Communist rule. For Britain and the United States, such a trajectory was utterly impermissible.

Fifth, I turn to the fact that Iraq was one of the first members of the United Nations and ratified all the relevant human rights instruments dealing with minority rights. Until the 1990s, Iraq was an assiduous participant in the UN human rights mechanisms, submitting periodical reports to the treaty bodies and submitting itself to interrogation in Geneva, followed by concluding observations and recommendations. This continued despite the eight years of

war with Iran, the disastrous invasion of Kuwait in 1991 and the long years of sanctions, blockade and continuous aerial attack, reminiscent of Britain's reliance on the Royal Air Force during and after the Mandate. Finally, there is Iraq's 2005 Constitution, a joke version of the 1932 Declaration. At the same time, since 1999, Iraq has not engaged with the UN human rights mechanisms. My conclusion is not sanguine.

### **Minorities in Iraq and the catastrophe following 2003**

Most reporting of Iraq tends to assume that there are three groups of interest to an observer, Shia, Sunni and Kurds, and that Iraq, already effectively divided into two in view of the Kurdish autonomy, may well split into three separate entities. However, Lalani (2010: 5) points out that the Iraqi population is extremely diverse in terms of ethnicity and religion. 'In addition to the three larger groups – Kurds, Shi'a Arabs and Sunni Arabs – communities of Armenians, Bahá'ís, Black Iraqis, Chaldo-Assyrians, Circassians, Faili Kurds, Jews, Kaka'i, Palestinians, Roma, Sabian Mandaean, Shabaks, Turkmen and Yazidis are to be found.'

However, it must be borne in mind that the demography of Iraq is overwhelmingly Arab and Muslim. According to the CIA Factbook for 2010,<sup>1</sup> the composition of the population of some 30,500,000 people was Arab 75–80 per cent, Kurdish 15–20 per cent and Turkoman, Assyrian or other 5 per cent. Religious belief was reported as Muslim 97 per cent (Shia 60–65 per cent, Sunni 32–37 per cent) and Christian or other 3 per cent. Significant language use was Arabic (official), Kurdish (official in Kurdish regions),

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Turkoman (a Turkish dialect), Assyrian (Neo-Aramaic) and Armenian (CIA 2010a).

Thus, taking the various minorities in alphabetical order, there are no more than 1000 Bahá'ís, members of

what is described by adherents as the youngest of the world's independent religions. Its founder, Bahá'u'lláh (1817–92), is regarded by Bahá'ís as the most recent in the line of Messengers of God. Many Muslims consider Bahá'ís as apostates or heretics due to their belief in a post-Islamic religion.

(Lalani 2010: 5)

However, there may be as many as two million Black Iraqis from East Africa concentrated in Basra and Sadr City. According to Lalani, they suffer discrimination and are often referred to as *abd* or 'slave'.

There are very few remaining Chaldo-Assyrians, but they are truly indigenous people of the region. With the Armenians, they form the Christian population of Iraq. Lalani cites the Brookings Institution to the effect that Christians in Iraq numbered between 1 million and 1.4 million in 2003 (Ferris and Stoltz 2008). By 2010, as a result of extreme violence and persecution, most have fled, and only an estimated 500,000 are reported to remain (US Commission on International Religious Freedom 2010).

Other minorities that are also smaller in number are in a precarious state (all statistics are from Lalani 2010: 5–6). The 2000 or so Circassians, who are Sunni Muslims, came to Iraq following the genocide of the North Caucasus



Circassians in 1864 at the hands of the Russian Empire. It is not known how many Faili Kurds, Shia Muslims, remain in Iraq. They lived along the Iran–Iraq border and were also active in business and politics in Baghdad but were persecuted by the Ba’ath regime, and many fled to Iran. Once there were as many as 150,000 Jews in Iraq, but very few remain. Persecution of Jews in Iraq grew substantially worse after 2003. On the other hand, it is believed that there are as many as 200,000 Kaka’i Kurds, also known as Ahl-e Haqq, living in Iraq, mostly around Kirkuk. They speak a separate language called Macho. They have a distinctive faith, ‘Kakaism’, meaning ‘brotherhood’, which combines Zoroastrianism and Shi’ism, similar to Yazidism. Since their religion does not permit them to curse Satan, many Muslims regard them as devil-worshippers. There remain 10–15,000 Palestinians of Sunni religion living in Iraq since 1948. While their presence was welcomed by the Ba’ath Party, they have been persecuted since 2003. Roma, about 60,000 strong, are known as Kawliyah in Iraq, and are Muslims, both Sunni and Shia. The Ba’ath regime allowed them to pursue occupations such as playing music, dancing, prostitution and selling alcohol, forbidden to other Muslims; but they too have been persecuted since 2003. There are perhaps 5000 Sabian Mandaean left in Iraq, followers of an ancient Gnostic religion, whose central prophet is John the Baptist. There are now 60–70,000 living outside Iraq, in Jordan, Syria and elsewhere, many having been killed and forced to leave since 2003. As Lalani (2010: 5) points out, they soon may be eradicated from Iraq altogether. The Shabak people claim to have resided continuously in the territory of Iraq since 1502, mainly in the Nineveh plains, between the Tigris and Khazir. They are Sunni and Shia Muslims, and it is not known how many there are, possibly

between 200,000 and 500,000. Kurds insist that the Shabak are Kurdish, and some Shabak agree. Since 2004, Shabak groups have reported to the United Nations that more than 750 of their community members have perished in armed attacks.

Before 2003 there were between 600,000 and two million Turkmen, the third largest ethnic group in Iraq, living in the north in towns and villages stretching from Tel Afar, west of Mosul, through Mosul, Erbil, Altun Kopru, Kirkuk, Taza Khurmatu, Kifri and Khaniqin. About 60 per cent are Sunni, with the remainder Ithna'ashari or other Shia. Although they have a distinctive language, they are rapidly assimilating and are no longer tribally organized. They claim the city of Kirkuk, but a referendum on Kirkuk should have taken place in 2007, but has not yet occurred. They too have been persecuted since 2003 (Lalani 2010: 7).

The numbers of Yazidis have reportedly fallen from 700,000 in 2005 to approximately 500,000 today. They live primarily in Jabal Sinjar, 115 km west of Mosul, with a smaller community in Shaikhan, in Nineveh governorate east of Mosul, where their holiest shrine of Shaykh Adi is located. Their religion is 4000 years old and combines pre-Islamic, Zoroastrian, Manichaeen, Jewish, Nestorian Christian and Muslim elements. They are dualists, believing in a Creator God, who is now passive, and in Malak Ta'us (the Peacock Angel), who executes divine will (Minority Rights Group 2008). As a result, many Muslims consider the Yazidis too to be devil-worshippers, and since 2003 they have been subject to persecution. In August 2007 four coordinated suicide truck bombings destroyed two Yazidi towns, killing at least 400

civilians, wounding 1562 and leaving more than 1000 families homeless (Lalani 2010: 8).

The overall picture, therefore, is of escalating persecution since 2003 and of dramatic falls in the populations of the respective minorities. This persecution is the direct if perhaps unintended consequence of the illegal invasion and occupation of Iraq by the United States, United Kingdom and the 'coalition' (Bowring 2008: Chapters 2 and 3). In 2008 Michael Youash wrote,

The legislative and political setbacks to minorities from August 2008 to the present, combined with the concerted effort to kill Christian Assyrians in Mosul, internally-displacing over 3,000 families in a matter of days, reflects the emptiness of the policy to improve minorities' suffering by making Iraq a safer place.

(Youash 2008: 374)

In April 2010, Amnesty International published an authoritative report, 'Iraq: Civilians Under Fire' (Amnesty 2010). This, like the Human Rights Watch reports, gives poignant and documented details of specific cases of persecution and killing on ethnic and religious grounds, commencing immediately after the end of Saddam Hussein's regime.

### **Iraq – a British imperial construct**

The snapshot presented in the previous section conveys accurately Iraq's remarkable heterogeneity, at any rate pre-2003. If present-day persecution of those minorities is a consequence of 2003, the logic of the events that led inexorably to this result was put in place by the British Empire. This is,

therefore, the point in my article in which some reverse chronology is in order.

Nelida Fuccaro (1997: 560–61) accurately pointed out in 1997 that

Like all other colonial states in the Middle East that came into existence in the aftermath of World War I, monarchical Iraq (1921–1958) was not a homogenous socio-political system. The modern state of Iraq was an artificial creation of Great Britain, the Mandatory power between 1920 and 1932. In theory, British colonial supervision guaranteed the development of a modern nation-state in a new entity that united the former Ottoman provinces of Baghdad, Basra and Mosul. In practice, it supported state building only when that was consistent with British colonial and imperial interests.

Charles Townsend too declared in his account of Britain's Iraq disaster that 'It is no exaggeration to say that modern Iraq was created, deliberately and unilaterally, by the British over the seven years following their first invasion in 1914. Recent history contains few examples of such dramatic and fateful intervention' (Townsend 2010: xxi).

The creation of the British mandate in Mesopotamia was itself the result of some particularly dirty dealing between Britain and France immediately after World War I. Negotiating the Treaty of Paris in 1919, as Margaret MacMillan points out (MacMillan 2002: 397–98; see for a summary Harty 2006), Britain and France began – and this was without historical precedent – to refer to the area that comprises contemporary Iraq as a single territory, Mesopotamia, stretching from Mosul in the north to Basra in the south with Baghdad in the middle. These cities gave their identity to the three Ottoman provinces. For

entirely cynical reasons, Britain and France were content to treat these three provinces as a unit, in the context of the creation of the French mandate in Syria and Lebanon, and Britain in Palestine. There was no 'Mesopotamian people'. Basra had links with India, Baghdad with Persia, and Mosul with Turkey and Syria. While these cities were thoroughly cosmopolitan, the regions surrounding them were tribally organized and led by religious factions: half Shia Muslim, a quarter Sunni Muslim and the rest Jews, Christians and the others described above. Those were only the religious divisions: half the population were also Arab, and the rest were Kurds and Persians. There was no shared nationalism. Arab nationalism in Iraq came later.

The key factor, not for the first time, was oil, especially since Winston Churchill ordered the conversion of the British navy from coal to oil. The oil concession in Mesopotamia was given to the British-controlled Turkish Petroleum Company (TPC), which had held concessionary rights to the Mosul wilaya (province) (see Earle 1924). The demise of the Ottoman Empire gave the Kurds a real chance of seizing control of the oil fields, and Iraqis were therefore content with a British Mandate covering all three provinces. In March 1925, the TPC was renamed the Iraq Petroleum Company (IPC) and was granted a concession for a period of 75 years (see, among many other sources, Saul 2007).

In a further irony, Mesopotamia was in fact a province of the Persian Empire for four centuries until the Islamic conquest of the seventh century AD. In the sixth century BC, Cyrus the Great of Persia defeated the Neo-Babylonian

Empire at the Battle of Opis, and Mesopotamia became part of the Achaemenid Persian Empire for nearly four centuries. In the late fourth century BC, Alexander the Great conquered Mesopotamia, inaugurating two centuries of Hellenistic Seleucid rule. The Parthians conquered the region during the reign of Mithridates of Parthia (r. 171–138 BC). The Roman Empire invaded several times from Syria. Finally, the Sassanid Persians under Ardashir I conquered the region in 224 AD, bringing the Parthian Empire to an end. This was, therefore, a return to Persian rule, which was in many ways the norm (see Mieroop 2006; Nissen and Heine 2009).

It is therefore no surprise that the Iraqi Ba'ath Party – the Arab Socialist Ba'ath (renaissance) Party was founded in Syria in 1947 – was defined by Arab nationalism confronting Imperial Iran. Iran was presented in the regime's narrative, its presentation within Iraq and for western consumption, as the age-old enemy of the Arabs (Halliday 2000: 117–18).

### **The British disaster – for Britain and for the minorities**

Townsend's recent book (2010) is aptly entitled *When God Made Hell*. For the present author, it was truly astonishing that in 2003 Britain's leaders decided to repeat Britain's humiliating experience in Iraq. Britain's challenge to the Ottoman Empire started with disaster. On 29 April 1916, the British garrison under General Townsend in the southern Iraq town of Kut surrendered unconditionally to the Ottoman forces, after a siege lasting 147 days. James Morris described this as 'the most abject capitulation in Britain's military history'. Various relief efforts cost the lives of around 23,000 Allied and around 10,000 Ottoman soldiers. Around 13,000 Allied soldiers survived the

siege only to become prisoners. Seventy per cent of the British and 50 per cent of the Indian troops died of disease or at the hands of the Ottoman guards during captivity (Morris 1980: 164–72).

Having relinquished dreams of incorporating Mesopotamia into British India, Britain settled for the League of Nations Mandate. Britain used its traditional policies of ethnic divide and rule. Andreas Wimmer points out (2003: 116; citing Batata 1978: 176, 186) that

[T]he politics of ethnicity dominated from the very moment when the British installed the Hashemite Faizal of the Hijaz, the commander of the Arab forces that contributed to the defeat of the Ottoman armies in the Middle East, as the king of Iraq. [Sunni Arabs] dominated politics in the first decades of independence, providing almost half of the premiers appointed during the mandate (1921 to 1932) and the monarchy (1932 to 1958) – the rest coming from old Ottoman bureaucratic families or the Sunni notables of Baghdad. Only 4 out of the 23 individuals appointed as premiers during that period were of Shii background.

The same was increasingly true of the armed forces.

Indeed, the model of ethnic and religious exclusion installed by Britain was broken only on two occasions. In 1936–37 Ahmed Hassan al-Bakr attempted to follow the example of Kemalist Turkey, with a commitment to an explicitly multi-ethnic Iraqi nationalism. The Kurdish language, Shia religion and a variety of ethnic symbols were recognized as part of Iraq's heritage. When Abd al-Karim Qasim overthrew the Iraqi monarchy on 14 July 1958, he based

his rule to a large extent on the Communist Party, which was able to mobilize the suburbs and to include representatives of the largest ethno-religious groups within its Central Committees. The Free Officers led by Qasim sought to bring about social reforms, including a serious attempt at land reform and to end the principle of indirect rule in tribal areas. Qasim had Kurdish ancestry, and promoted an understanding of Iraq as a multi-ethnic national state (Batata 1978; Wimmer 2003). In 1963, Qasim was overthrown by a Ba'ath coup with the support of Britain and the United States, and shot. In the context of the Cold War the perceived communist threat was paramount for Britain and the United Kingdom, just as the Iranian revolutionary threat from 1979 meant that Saddam Hussein and the Ba'ath Party received very substantial material and political support from the former colonial power.

The Jews were the most characteristic victims of British policy. Townsend (2010: 6) observes that inter-war Iraq had a very small overall population, of just two million, with big communities of Kurds, Christians and Jews in the north, and one of the world's biggest urban Jewish communities in Baghdad itself; these minorities outnumbered Arabs. 'For the Jews of Baghdad, who formed a majority of the city's inhabitants in 1917, Britain's failure to preserve minority protection (which they had enjoyed for centuries under Ottoman rule) would prove catastrophic' (Townsend 2010: 526).

### **The dream of the League of Nations**

The policies of Bakr and Qasim echoed a remarkable document, the Declaration of the Kingdom of Iraq made at Baghdad on 30 May 1932 on the occasion of the termination of the Mandatory Regime in Iraq, and containing



the guarantees given to the Council of the League of Nations by the Iraqi government (Iraq's Genesis and Current Status in Documents n.d. together with many other documents). Paragraphs 2–10 contain a comprehensive set of specific minority rights. Article 2 proclaims radical non-discrimination:

1. Full and complete protection of life and liberty will be assured to all inhabitants of Iraq without distinction of birth, nationality, language, race or religion.

2. All inhabitants of Iraq will be entitled to the free exercise, whether public or private, of any creed, religion or belief, whose practices are not inconsistent with public order or public morals.

Article 4 (5), including electoral and other rights, showed that while Arabic and Kurdish were recognized as the major languages, other languages should be given recognition:

(5) Notwithstanding the establishment by the Iraqi Government of Arabic as the official language, and notwithstanding the special arrangements to be made by the Iraqi Government, under Article 9 of the present Declaration, regarding the use of the Kurdish and Turkish languages, adequate facilities will be given to all Iraqi nationals whose mother tongue is not the official language, for the use of their language, either orally or in writing, before the courts.

Article 8 contained provisions for mother tongue education that are as comprehensive as the post-1990 Council of Europe standards:

1. In the public educational system in towns and districts in which are resident a considerable proportion of Iraqi nationals whose mother tongue is not the official language, the Iraqi Government will make provision for adequate facilities for ensuring that in the primary schools instruction shall be given to the children of such nationals through the medium of their own language; it being understood that this provision does not prevent the Iraqi Government from making the teaching of Arabic obligatory in the said schools.

In towns and districts where there is a considerable proportion of Iraqi nationals belonging to racial, religious or linguistic minorities, these minorities will be assured an equitable share in the enjoyment and application of sums which may be provided out of public funds under the State, municipal or other budgets for educational, religious or charitable purposes.

Article 10 provided for the compulsory jurisdiction of the Permanent Court of International Justice.

However splendid these words, the reality was, as Toby Dodge points out, the emergence of a quasi-state as the result of irresolvable tensions inherent in British nation-building. Even though Iraq entered the League of Nations as a self-determining nation state, in fact it was a territory

inhabited by a diverse and divided population run by a small clique of mainly Sunni politicians who could not control the country without the help of British airplanes [...] The commitments previously given to the League by both Britain and Iraq concerning the inclusion of and comity among the

different ethnic and religious communities were discarded to achieve Iraq's formal independence as quickly as possible.

(Dodge 2005: 31)

### **Iraq's minority rights obligations in international law**

Iraq was admitted to the United Nations on 21 December 1945. In December 1948, the UN General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide. Iraq acceded to the Genocide Convention on 20 January 1959. On 25 January 1971, Iraq was one of the first states to ratify the International Covenant on Civil and Political Rights (ICCPR). Article 26 of the Covenant prohibits discrimination on grounds of race, religion and language, and Article 27 is specifically dedicated to the rights of minorities:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

On 28 November 1996, Iraq submitted its fourth periodic report (UN Human Rights Committee 1996).<sup>2</sup> In paragraphs 84–86 Iraq insisted that 'persons belonging to minorities were enjoying their rights without any discrimination and that Iraq was endeavouring to further enhance those rights'. It also complained bitterly of the situation brought about by the United States and the

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United Kingdom following the conflict in 1991, especially as concerned the Kurds. Iraq concluded,

The best way to enable the Iraqi Kurds to enjoy their rights is through positive dialogue, without any external interference, between the political leadership and the Kurdish leaders in such a way as to promote the human rights of all citizens within a united Iraq.

The Human Rights Committee, the Treaty Body for the ICCPR, provided its Concluding Observations on 19 November 1997 (UN Human Rights Committee 1997). The Committee welcomed 'the State party's fourth periodic report, and notes its timely submission and the willingness of Iraq to have a continued dialogue with the Committee', although regretted Iraq's failure to deal with the 'actual state of implementation of domestic laws and of the Covenant, nor with the difficulties encountered in the course of their implementation'. It also noted the difficulties caused for Iraq by the eight years' war with Iran, and the suffering and death caused by sanctions and blockades, especially for children.

Paragraph 20 is of particular significance:

20. The Committee expresses concern about the situation of members of religious and ethnic minorities, as well as other groups which are the subject of discrimination in Iraq, in particular the Shi'ite people in the Southern Marshes and the Kurds. The Committee also regrets the lack of information on the situation of other minorities, such as the Turkeman, Assyrian, Chaldean and Christian minorities, and on the enjoyment of their rights under articles 26 and 27 of the Covenant. In this connection,

the Committee calls attention to its General Comment No. 23 (50) on article 27 of the Covenant. Further:

The Committee recommends that measures be taken to ensure full equality of rights for members of all religious groups as well as ethnic and linguistic minorities, and that information be provided in the State party's next periodic report on the implementation of articles 26 and 27 of the Covenant.

Iraq has not submitted a report since 1996.

Iraq also ratified the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) on 25 January 1971. It submitted periodical reports in 1993 (the second) and 1996 (the third).

Iraq has undertaken obligations to protect minority rights through other UN conventions. Thus, on 14 January 1970 Iraq ratified the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (CERD). Iraq was an assiduous reporter, submitting its twelfth and thirteenth reports, due in 1993 and 1995, in 1996; and its fourteenth report, due in 1997, on 11 February 1999 (UN Committee on the Elimination of Racial Discrimination CERD 1999). In paragraph 74 Iraq declared,

The Iraqi State has recognized not only the legitimate ethnic rights of the Kurds but also the rights of other minorities, such as the Turkomans and the various Syriac-speaking communities.

It drew the Committee's attention to a number of important documents:

Decree No. 89 of 1970 recognizing the cultural rights of the Turkoman minority. This focused especially on print and TV media in the Turkoman language.

Decree No. 251 of 1972 recognizing the cultural rights of Syriac-speakers. Syriac-speaking citizens belonging to the Assyrian, Chaldean and East Syrian communities were to have instruction in Syriac at primary schools, and taught as a subject in secondary schools.

The Committee provided its Concluding Observations on 12 April 2001 (UN Committee on the Elimination of Racial Discrimination 2001), and stated (paragraph 7),

It is noted with interest that the State party remains committed to the declaration of 1970 which recognized the ethnic, cultural and administrative rights of Kurdish citizens in the areas in which they constituted a majority, as well as to the Iraqi Kurdistan Regional Autonomy Act of 1974 by which the Autonomous Region was established as a separate administrative unit endowed with distinct personality. The laws and regulations aiming at protecting the cultural identity of the Turkoman minority and the Syriac-speaking community, dating back to the 1970s, are also commended.

However, in paragraphs 12 and 13 it expressed concern:

12. Concern is also expressed over allegations that the non-Arab population living in the Kirkuk and Khanaquin areas, especially the

Kurds, Turkmen and Assyrians, have been subjected by local Iraqi authorities to measures such as forced relocation, denial of equal access to employment and educational opportunities and limitations in the exercise of their rights linked to the ownership of real estate.

13. It is also noted with concern that the situation prevailing in the northern governorates has caused much suffering and the forced displacement of a large part of the population, including for members of ethnic groups living in the area.

Likewise, Iraq has provided no report since 1999.

On 15 June 1994, Iraq acceded to the 1989 Convention on the Rights of the Child. This convention later specifically requires in Articles 29 and 30 that the education of a child must be directed to the 'development of [...] his or her own cultural identity, language and values', and gives a child of a religious minority the right 'to enjoy his or her own culture, [and] to profess and practise his or her own religion'.

Iraq entered a reservation to the Convention, as follows:

The Government of Iraq has seen fit to accept [the Convention] [...] subject to a reservation in respect to article 14, paragraph 1, concerning the child's freedom of religion, as allowing a child to change his or her religion runs counter to the provisions of the Islamic *Shariah*.

Iraq submitted an initial report, which was considered by the Committee on the Rights of the Child on 23–24 September 1998. The Committee adopted its Concluding Observations on 26 October 1998 (UN Committee on the

Rights of the Child 1998). While expressing its concern at Iraq's reservation, the Committee made no comment on the question of education or religion.

Iraq has not provided any further report.

On 16 February 2010, the UN Human Rights Council in Geneva conducted its periodic review of Iraq (UN Human Rights Council 2010a). The Iraqi Human Rights Minister Wijdan Salim attended the periodic review working group session. One of the Council's primary recommendations was that Iraq 'Take measures to promote and protect the rights of minorities'. The National Report was dated 18 January 2010 (UN Human Rights Council 2010b), and contained the following:

55. As far as minority rights are concerned, the Constitution guarantees the rights of all minorities, including freedom of belief and freedom of religion (art. 2), freedom of thought, conscience and belief (art. 42) and freedom of worship (art. 43). It also guarantees cultural rights and linguistic identity (art. 4), prohibiting all forms of racism and discrimination (art. 7) and guaranteeing freedom of choice in respect of personal status based on religion, faith group, belief or preference (art. 41).

56. Minorities have been subjected to a number of grave violations, largely at the hands of terrorist groups and outlawed militias. In some isolated incidents, they have also been targeted as individuals or as a group. Places in which minorities are represented, including places of worship, have also been targeted, with the result that some have been forced to flee to other parts of the country or abroad. The Government



of National Unity has taken various measures to provide protection and emergency aid to vulnerable minorities, together with compensation for victims.

57. The Government has adopted a policy to support the rights and freedoms of minorities in keeping with the guarantees set out in the Constitution. For example, an endowment fund for other faiths was established to safeguard the religious rights of minorities, while religious institutions and places of worship are protected and support is given to civil society organizations dedicated to the protection of minority rights and freedoms.

The recent reports of minority rights group International and Human Rights Watch show that the Iraqi government is lamentably failing to protect minorities, and is in fact presiding over their persecution and even extermination. The HRC Report does not comment on the very significant fact that Iraq has entirely ceased to engage with the treaty bodies responsible for overseeing its compliance with its continuing international treaty obligations.

### **The Iraqi Constitution**

Larry Diamond commented on the interim constitution of 2004 as follows:

But the interim constitution, while impressively liberal in many respects, was itself produced under great pressure of time through a process that was not transparent. As a result, many Iraqis were deeply aggrieved that major constitutional principles such as federalism,

extensive minority vetoes, and a very limited role for religion in public life were being foisted upon them without debate.

(Diamond 2005: 21)

The Iraqi Constitution, adopted by a highly disputed referendum on 15 October 2005, hardly stands comparison with the 1932 Declaration, which contained the comprehensive set of specific minority rights referred to above, and failed to answer the questions posed by Diamond and others.

A word of warning: it is hard to find a definitive version in English or even in Arabic. UNESCO has provided a translation of the draft presented for voting (Final Draft Iraqi Constitution), while the United Nations Assistance Mission in Iraq (established in August 2003) has provided an English translation of the final version as of 30 January 2006, following several amendments (Iraqi Constitution).<sup>3</sup>

In its final version the Constitution provides the following in Article 2:

First: Islam is the official religion of the State and is a foundation source of legislation:

A. No law may be enacted that contradicts the established provisions of Islam

B. No law may be enacted that contradicts the principles of democracy.

C. No law may be enacted that contradicts the rights and basic freedoms stipulated in this Constitution.

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Second: This Constitution guarantees the Islamic identity of the majority of the Iraqi people and guarantees the full religious rights to freedom of religious belief and practice of all individuals such as Christians, Yazidis, and Mandeans. Article 3 explicitly recognizes that 'Iraq is a country of multiple nationalities, religions, and sects'.

As Eric Herring and Glen Rangwala point out (Herring and Rangwala 2006: 40–41), this fudges the role of religion in the state. It is entirely unclear how the 'rule of Islam', 'principles of democracy' and 'rights and basic freedoms' are to be weighed against each other, or, indeed, what they are intended to mean.

Article 4(1) provides,

The Arabic language and the Kurdish language are the two official languages of Iraq. The right of Iraqis to educate their children in their mother tongue, such as Turkmen, Syriac, and Armenian shall be guaranteed in government educational institutions in accordance with educational guidelines, or in any other language in private educational institutions.

'Educational guidelines' are nowhere defined. The right to mother tongue education is an empty promise in this Constitution.

Article 14 prohibits discrimination: 'Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, color,

religion, sect, belief or opinion, or economic or social status' when they manifestly are not.

Most important for the purpose of this article is Article 125, in Chapter 4, on local administrations, which provides, 'This Constitution shall guarantee the administrative, political, cultural, and educational rights of the various nationalities, such as Turkomen, Chaldeans, Assyrians, and all other constituents, and this shall be regulated by law'.

No such law has yet been enacted.

Not only does the 2005 Constitution fall far short of the 1932 Declaration in precision and enforcement mechanisms, it is the legal framework that has accompanied the disaster that has befallen Iraq's minorities since 2003.

## **Conclusion**

Toby Dodge identifies four interlinked structural problems that have dominated Iraqi politics from 1920 until 2003. The fourth is '[...] the exacerbation and re-creation by the state of communal and ethnic divisions as a strategy of rule' (Dodge 2005: 169). It is, sadly, the case that this method of rule was introduced by the British, as the default colonial response to complexity. The monarchy ruled in the same way, and the Ba'ath Party was defined by exclusive Arab nationalism. This article has shown in detail how the occupation followed by the regime since 2005 has created the conditions for a disaster for Iraq's minorities. How will this change? A break-up of Iraq into three entities may well happen, but for the minorities this is highly unlikely

to improve their situation. Nor is it likely that a new golden age will be created by punctilious compliance with UN standards.

It may be that Iraq's future will be closely linked with that of Iran, its former ruler. Iran's population, at some 78,000,000, is more than double that of Iraq. But its population is far less ethnically homogenous, even if 93 per cent are Muslim, 89 per cent of them Shia. According to the CIA Factbook (CIA 2010b),<sup>4</sup> Iran has just 51 per cent Persian, 24 per cent Azeri, 8 per cent Gilaki and Mazandarani, 7 per cent Kurd, 3 per cent Arab, 2 per cent Lur, 2 per cent Baloch, 2 per cent Turkmen and 1 per cent other. In terms of language use, 58 per cent use Persian and Persian dialects, 26 per cent Turkic and Turkic dialects, 9 per cent Kurdish, 2 per cent Luri, 1 per cent Balochi, 1 per cent Arabic, 1 per cent Turkish and other 2 per cent. Until 1813, following two Russo-Persian wars, contemporary Azerbaijan was part of Persia, and the seventeen million Azeris in modern Iran greatly outnumber the entire population of Azerbaijan at just over eight million.

At the present moment a paradoxical and contradictory process is taking place in the region. It is apparent that Iranian influence in Iraq is much stronger since 2003, and southern Iraq may be seen to be under Iranian control. At the same time, however, Iran itself is far from stable, with an increasingly politicized and numerous youth: 24 per cent of the population are 14 or younger. However, the equivalent population of Iraq is 40 per cent. For established hierarchies this is very bad news. And ethnic consciousness grows ever stronger in Iran.

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The only firm prediction that can be made, therefore, for Iraq is a future of much greater turbulence. The – very young – people of Iraq will decide the fate of the territory. It is to be hoped that the eventual future will provide a peaceful home for Iraq's diverse ethnicities and religious groups.

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